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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

In the Matter of the Application of PacifiCorp)	PacifiCorp's Post-hearing Brief on
d/b/a/ Utah Power & Light Company for)	Reconsideration of Order No. 29034
Approval of Changes to its Electric Service)	
Schedules)	PAC-E-02-1

PACIFICORP

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11 INTRODUCTION

12 PacifiCorp, d/b/a Utah Power & Light Company ("PacifiCorp" or "the Company"), is
13 asking this Commission to reconsider and set aside its determination in Order No. 29034, issued
14 June 7, 2002 ("Order"), that PacifiCorp failed to provide adequate notice to its customers in
15 violation of Rule 102 of the Commission's Utility Customer Information Rules (IDAPA
16 31.21.02.102) ("Rule 102") and its assessment of a \$20 per customer credit, or a total of
17 \$1,087,720, as a penalty for the alleged violation.

18 The Commission has before it now factual evidence and legal argument that it did not
19 have when it made those findings. As a result of the evidence presented at the evidentiary
20 hearing on reconsideration on September 10, 2002 ("hearing on reconsideration"), the
21 Commission is now aware that: 1) if Rule 102 applied to the Company's Application for a
22 temporary power cost surcharge, the Company's failure to comply with that Rule was a good
23 faith mistake made *after* consulting with counsel—it was not a matter of neglect or indifference;
24 2) the Company had a communications plan in place and implemented it; 3) customers were
25 aware of the Company's Application and participated in the proceeding by way of intervention,
26 public comment and attendance at the public meetings and hearing; and 4) all issues relating to

1 the Company's Application and the rate change resulting from the Stipulation were raised and
2 thoroughly developed for Commission consideration prior to its decision to approve the
3 Stipulation in Order No. 29034.

4 The Commission should not be influenced by its prior action that was not sufficiently
5 informed. Rather, its decision should be influenced by the evidence presented at the hearing on
6 reconsideration and these important points:

- 7 • There is a reasonable uncertainty about the applicability of Rule 102 to this filing.
8 The filing was not a general rate filing, and arguably not a tracker rate filing
either.
- 9 • The penalty provided by IDAPA 31, Title 21, Chapter 02 (the Utility Customer
10 Information Rules) for a violation of Rule 102 is not a monetary one, and the
Commission has *never* before imposed a monetary penalty under Rule 102.
- 11 • There was **one** violation here (if any), not 54,386. If bill stuffer notice as
12 provided by Rule 102 was required, the Company's failure to issue such notice
was a single violation of a Commission rule.
- 13 • The law does not allow the Commission to order payment of penalties to
14 customers. Civil penalties must be paid to the Idaho State Treasury.
- 15 • The size of the penalty imposed is grossly in excess of any penalty the
16 Commission has ever before imposed on a utility—despite the strong mitigating
facts in this case.

17 The evidence and argument the Commission now has before it suggest that if a violation
18 of Rule 102 is found to have occurred, and if a monetary penalty is permitted by Idaho statutes
19 and administrative rules, the Commission's reaction should be moderate. To react otherwise will
20 result in disparately harsh treatment outside the bounds of the law and Commission precedent.
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1 **ARGUMENT**

2 **A. Legal Arguments Presented in PacifiCorp's Petition for Reconsideration.**

3 Rather than restate in their entirety the legal arguments it presented in its Petition for
4 Reconsideration filed June 28, 2002 ("Petition"), PacifiCorp hereby incorporates them by
5 reference.¹ Those arguments can be summarized as follows:

6 Rule 102, which requires individual customer notice when an electric utility "*applies for*
7 *a general or tracker rate change,*" does not apply to a proceeding such as this (an application for
8 a temporary power cost surcharge), which is neither a general nor a tracker rate case. No one
9 alleges that this was a general rate case. This case also does not meet the definition of a tracker
10 case. The only definition of a "tracker" case appears in Rule 122.02 of the Commission's Rules
11 of Procedure, IDAPA 31.01.01.122.02, which states:

12 **Exceptions for Trackers, etc.** This rule applies only to general
13 rate increases. Examples of cases outside the scope of this rule
14 include (but are not limited to) fuel, power cost adjustment (PCA),
15 commodity or purchased power tracker rate increases, emergency
16 or other short-notice increases caused by disaster or weather-
17 related or other conditions unexpectedly increasing a utility's
expenses, rate increases designed to recover governmentally-
imposed increases in costs of doing business, such as changes in
tax laws or ordinances, or other increases designed to recover
increased expenses arising on short notice and beyond the utility's
control.

18 If the term "etc." in the heading means anything, it means that some of the listed cases are not
19 trackers. This case constituted an "other increase[]" designed to recover increased expenses
20 arising on short notice and beyond the utility's control." For the reasons described in
21 PacifiCorp's Petition, it was reasonable for PacifiCorp to conclude that such "other increases" do
22 not constitute trackers and do not require individual customer notice under Rule 102. This
23 interpretation is consistent with prior Commission application of Rule 102 to general and purely

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25 ¹ The Commission agreed at the hearing on reconsideration that it would be appropriate
26 for PacifiCorp to rely on the legal arguments it presented in its Petition rather than restate them
in their entirety in its post-hearing brief.

1 tracker rate cases. Therefore, if the Commission disagrees with the Company's interpretation of
2 Rule 102 and determines that the Rule applies to this proceeding, the Company should not be
3 penalized for its interpretation which is reasonable in light of both the text of the Rule and
4 Commission precedent.

5 Second, even if Rule 102 is interpreted to apply to requests for temporary rate surcharges,
6 the only remedy authorized for violation of that Rule is return of the application to the filing
7 utility.² This interpretation of the Rule is consistent with prior interpretations afforded it by the
8 Commission and its Staff, which have never before recommended or imposed a monetary
9 penalty for a Rule 102 violation.³ It is also consistent with the "Administrative Appeals" section
10 of the Utility Customer Information Rules, Rule 3, which states that "[t]here are no
11 administrative appeals under these rules because there are no proceedings under these rules."⁴
12 As provided by the rules implementing the Administrative Procedures Act, every administrative
13 rule chapter must contain an "Administrative Appeals" section "to describe any appeal or
14 hearing rights for affected individuals relating to the programs or services described in the rule
15 chapter."⁵ The Idaho Administrative Rule Writer's Manual requires that the "Administrative
16 Appeals" section of each chapter "state whether or not the rule is subject to administrative appeal
17 and cite the rule governing the appeal process." Thus, in promulgating its Customer Information
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19 ² See IDAPA 31.21.02.102.05 (Rule does not create due process rights in customers, but
failure to comply "can be grounds for returning an application for incompleteness").

20 ³ See *Re Avista Corporation dba Avista Utilities-Washington Water Power Division*, Case
21 No. AVU-E-00-2, Order No. 28366 (May 2, 2000) (Staff reminded company that Rule 102
notice, which "was once again deficient," could result in return for incompleteness); *Re Avista*
22 *Corporation dba Avista Utilities-Washington Water Power Division*, Case No. AVU-E-00-2,
Order No. 28402 (June 13, 2000) (Commission imposes no penalty for repeated violations of
23 Rule 102); *Re Intermountain Gas Company*, Case No. INT-G-99-1, Order No. 28068 (June 4,
1999) (Staff and Commission agree that remedy for failure to comply with Rule 102 was to
24 return application for incompleteness; instead of returning application, Commission suspends
proposed effective date of PGA tracker rate change for 30 days).

25 ⁴ IDAPA 31.21.02.003.

26 ⁵ IDAPA 44.01.01.101.02(e).

1 Rules, the Commission did not afford any “appeal or hearing rights” for violations of Rule 102.
2 Instead, the Commission provided that the sole remedy for a Rule 102 violation is return of the
3 application for incompleteness. By contrast, the imposition of civil penalties by the Commission
4 requires “proceedings” and the right to appeal.⁶ A consistent reading of the foregoing provisions
5 can only lead to the conclusion that the monetary penalty imposed in this proceeding is not
6 authorized by Rule 102 and is, therefore, unlawful. Absent appeal or hearing rights, return of an
7 application to a utility is the only remedy for a Rule 102 violation that does not violate a utility’s
8 due process rights.

9 Third, the formula the Commission applied in this case to calculate the monetary penalty
10 imposed—*i.e.*, “X” dollar amount multiplied by the number of customers served—is not
11 supported by the relevant statutes upon which the formula is based.⁷ Pursuant to those statutes,
12 the maximum monetary penalty that can be imposed for the single rule violation PacifiCorp
13 allegedly committed is \$2,000.⁸ As demonstrated by the following chart, the Commission’s “per
14 customer” application of the Idaho civil penalty provisions is especially unconscionable when
15 applied to other utilities serving Idaho customers.

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23 ⁶ See Idaho Code § 61-701 *et seq.*; Idaho Code §§ 61-626, 627.

24 ⁷ See Idaho Code §§ 61-706, 61-707 (maximum penalty for single violation of a
Commission rule is \$2,000 per day).

25 ⁸ As noted above, PacifiCorp disputes the Commission’s finding that a violation of Rule
26 102 triggers the Idaho Code Chapter 61, Title 7 penalty provisions.

Utility	Number of Idaho customers ⁹	Total penalty if # of customers multiplied by \$20	Total penalty if # of customers multiplied by \$2000
Idaho Power Company	369,924	\$7,398,480	\$739,848,000
Intermountain Gas Company	210,687	\$4,213,740	\$421,374,000
Avista Utilities	103,573	\$2,071,460	\$207,146,000
United Water Idaho	68,534	\$1,370,680	\$137,068,000

The excessiveness of those (potential) penalty amounts becomes even more apparent in light of the fact that the Idaho Code contemplates that single violations can be continuing, *i.e.*, each day's violation can be deemed a separate and distinct offense,¹⁰ and because the text of the applicable civil penalty provisions has not changed since those provisions were enacted in 1913.

Fourth, not only did the Commission misinterpret its authority regarding the amount of the penalty it can impose under Idaho Code § 61-701 *et seq.*, it also exceeded its authority when it required payment of the penalty to customers instead of to the Idaho State Treasury. Idaho Code § 61-712 provides, in relevant part, that “[a]ll fines and penalties recovered by the state in [an action to recover penalties under Title 61] *shall* be paid into the state treasury to the credit of the general fund.” (Emphasis added.) Thus, the Commission’s order that the Company pay its penalty directly to customers in this proceeding is unlawful. There is good reason for this requirement that civil penalties be paid to the State Treasury; the power to order the payment of money to constituents creates a form of political patronage that is inconsistent with good government.

⁹ These numbers are taken from the Commission’s 2001 Annual Report.

¹⁰ Idaho Code § 61-707.

1 Finally, the Commission's interpretation and application of Idaho Code § 61-701 *et seq.*
2 results in a penalty that is without precedent in at least three respects¹¹: (1) the Commission has
3 never before interpreted its rules to allow penalties to accrue on a per customer basis; (2) the
4 Commission has never before imposed a penalty of this magnitude for *any* type of violation
5 heretofore found under Chapter 61, Title 7; and (3) the Commission has never before imposed
6 *any* monetary penalty for a violation of Rule 102. The Commission's decision to impose a
7 monetary penalty for an alleged violation of Rule 102 deviates significantly from its prior
8 practice with respect to violations of that Rule. In addition, the over \$1 million penalty assessed
9 in this proceeding is grossly excessive in light of the violation alleged and the facts presented in
10 the hearing on reconsideration, and as compared to civil penalties imposed previously by the
11 Commission for violations that are more severe in nature and in scope.

12 **B. Evidence in Mitigation if Rule 102 Applies to the Company's Application for a**
13 **Temporary Power Cost Surcharge.**

14 If the Commission decides that Rule 102 applies to PacifiCorp's Application in this case
15 and that a monetary penalty is legal, the evidence the Company presented on reconsideration
16 supports a moderate reaction to the violation that occurred. As noted above, imposition of a
17 monetary penalty for a Rule 102 violation is unprecedented. The evidence the Commission now
18 has before it demonstrates that departure from that past practice is unwarranted, or that any
19 departure from that precedent certainly should not exceed the maximum penalty previously
20 assessed by the Commission for **any** violation of Idaho's public utility statutes, rules or orders.

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¹¹ PacifiCorp's Petition details the numerous ways in which the Commission's findings
25 respecting the civil penalty imposed in this case deviate from its prior orders.

1 **1. The Company’s Failure to Comply with Rule 102 was a Good Faith Mistake**
2 **Made *After* Consulting with Counsel—It was not a Matter of Neglect or**
3 **Indifference.**

4 Compliance with the relevant state regulatory notice requirements and making as much
5 information available to customers as possible, consistent with clarity, are two of the primary
6 objectives the Regulation and Corporate Communications departments generally consider when
7 the Company anticipates making a regulatory filing. (Larson Direct Testimony on
8 Reconsideration, pages 3-4; Eskelsen Direct Testimony on Reconsideration, page 2 lines 4-10.)
9 This filing was no exception.

10 When it filed its Application in this case, the Company reviewed the Commission’s
11 notice rules and took steps to ensure compliance. Before the filing was made, the Company
12 consulted with its counsel regarding whether Rule of Procedure 122 (60-day advance notice of
13 intent to file a general rate case) applied to this filing. (Larson Direct Testimony on
14 Reconsideration, page 5 lines 10-12.) Counsel reviewed the rule and advised PacifiCorp that
15 Rule 122 did not apply because this was not a general rate case. (Larson Direct Testimony on
16 Reconsideration, page 5 lines 13-14.) The Commission Staff confirmed this advice. (Exhibit
17 No. 26.)

18 After filing the Application, issuing a press release, and complying with the notice
19 prescribed by Rule of Procedure 123 and Idaho Code § 61-307 (filing of proposed schedules
20 with Commission and keeping schedules open for public inspection), the Company consulted
21 with its counsel regarding the applicability of Rule 102 to this filing. (Larson Direct Testimony
22 on Reconsideration, page 5 lines 16-21, page 6 lines 10-12.) The Company’s counsel reviewed
23 the Rule and advised the Company that, because this was neither a general nor a tracker rate
24 case, bill-stuffer notice under Rule 102 was not required. (Larson Direct Testimony on
25 Reconsideration, page 6 lines 12-15; Exhibit No. 26.) *Based on that advice*, the Company did
26 not provide bill-stuffer notice to customers regarding its Application. (Larson Direct Testimony
on Reconsideration, page 6 lines 17-18.)

1 In short, the Company did not ignore the Commission's Customer Information Rules or
2 take lightly its responsibility to communicate with customers about this filing. Both the
3 Company and its counsel reviewed each of the Commission's notice provisions—including those
4 provided by Rule 102—and evaluated their applicability to this Application. The Company's
5 decision *not* to issue bill-stuffer notice was made after counsel advised it that Rule 102 did not
6 apply. Thus, if a Rule 102 violation occurred, it was the result of a good faith misreading of the
7 Rule, not the result of negligence or indifference.

8 These circumstances contrast starkly with the circumstances described in prior
9 Commission orders involving Rule 102 violations. In multiple proceedings involving repeat
10 violations of Rule 102, Avista Utilities-Washington Water Power Division characterized its
11 failure to comply with the Customer Information Rules' requirement of individual notice as
12 "administrative oversight[]" and "inadvertent failure."¹² Notwithstanding Avista Utilities'
13 admissions respecting its failure to abide by the Rule 102 notice requirements, the Commission
14 did not impose **any** penalty upon Avista; instead it merely cautioned the company that "repeated
15 instances of oversights will demonstrate an unacceptable pattern of neglect."¹³

16 At a minimum the circumstances surrounding the Company's decision not to provide bill-
17 stuffer notice to customers demonstrate that imposition of a monetary penalty that exceeds by
18 1,350 percent the highest penalty ever approved by the Commission is unreasonable.¹⁴ In light
19 of the Commission's treatment of Avista's repeated violations of Rule 102, PacifiCorp's diligent
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21 ¹² *Re The Washington Water Power Company*, Case No. WWP-E-98-11, Order
22 No. 28097 (Jul. 29, 1999); *Re The Washington Water Power Company*, Case No. WWP-E-98-
23 11, Order No. 28155 (Sept. 16, 1999); *Re Avista Corporation dba Avista Utilities-Washington*
24 *Water Power Division*, Case No. AVU-E-00-2, Order No. 28366 (May 2, 2000).

25 ¹³ *Re Avista Corporation dba Avista Utilities-Washington Water Power Division*, Case
26 No. AVU-E-00-2, Order No. 28420 (Jun. 13, 2000).

¹⁴ *See In the Matter of the Investigation of the Washington Water Power Company and its*
Compliance with WWP-Electric Line Extension Tariff Schedule No. 51., Case No. WWP-E-94-9,
Order No. 25816 (Nov. 29, 1994) (approving reduced civil penalty of \$75,000 for Water Power's
41-month violation of its Schedule 51 line extension tariffs).

1 efforts to ensure compliance with Commission notice requirements in this case and the
2 circumstances surrounding the Company's first and only violation of the same Rule would
3 suggest that at most a warning and order for prospective compliance would be the most
4 reasonable response.

5 **2. The Company had a Communications Plan in Place and Implemented It.**

6 In general, when PacifiCorp makes a regulatory filing, the Regulation and Corporate
7 Communications departments work together to develop and implement a communications plan
8 specific to that filing. (Larson Direct Testimony on Reconsideration, page 2 line 22 – page 3 line
9 4.)

10 Similarly, those departments worked together to develop the communications plan for
11 this proceeding designed to comply with regulatory notice requirements and to make available as
12 much information to customers as possible, consistent with clarity. (Eskelsen Direct Testimony
13 on Reconsideration, page 3 lines 10-12.) Although not contained in a single document, the
14 communications plan developed was comprised of the following elements: (1) consultation with
15 legal counsel concerning requirements for legal notices and bill inserts related to the proceeding
16 (*Id.* at page 3 lines 17-19); (2) issuance of a news release concurrent with the initial filing, plus
17 follow-up contacts with the news media, as needed (*Id.* at page 3 lines 15-16); (3) posting the
18 news release on the Utah Power internet web site (*Id.* at page 4 lines 18-19); (4) making the rate
19 schedules available for public inspection at local offices (*Id.* at page 4, lines 19-20); (5) creation
20 of a communications package for the Company's call centers to use in response to customer
21 telephone calls (Exhibit No. 35); and (6) direct customer communications with interested parties
22 both before and after the filing was made (Larson Direct Testimony on Reconsideration, page 4
23 line 11 – page 5 line 6; Pond Direct Testimony on Reconsideration; Exhibit No. 33).

24 The Company's testimony and exhibits on reconsideration demonstrate PacifiCorp's
25 implementation of its plan as well as its effectiveness. The Company's news releases were
26 published on its web site and sent to 14 different news media outlets (newspaper, radio and

1 television) in the Company's Idaho service territory. (Eskelsen Direct Testimony on
2 Reconsideration, page 5 lines 6-11.) Company representatives conducted interviews with news
3 reporters (*Id.* at page 5 line 14 - page 6 line 6), and over 20 newspaper articles, editorials, and
4 letters to the editor were published about the case prior to the public meetings that took place in
5 May, 2002 (Exhibit No. 32).

6 The Company also communicated with customer groups about this filing face-to-face.
7 Before the Application was filed, Doug Larson, Vice President, Regulation, and Glen Pond,
8 Regional Community Manager for the Company's Idaho service territory, met with
9 representatives of the irrigation class, Commission Staff, and others to discuss and receive
10 comments about the proposed filing. (Larson Direct Testimony on Reconsideration, page 4 lines
11 11-19.) The filing also was discussed with the Company's Consumer Advisory Group¹⁵ on two
12 different occasions—once before and once after the case was filed. (Exhibit No. 33.) In
13 addition, Mr. Pond and Robert Smead, the Company's Idaho Irrigation Specialist, met on 9
14 different occasions with various members of the irrigation class¹⁶ to discuss the filing and the
15 implications particular to irrigators. (*Id.*)

16 Thus, PacifiCorp's failure to issue bill-stuffer notice is **not** an indication that the
17 Company intended to hide or disguise its filing in this case. On the contrary, as demonstrated by
18 the Company's communications plan and its implementation, the Company took seriously its
19 responsibility to notify customers about this proceeding. As demonstrated below, the level of
20 customer involvement in this case from beginning to end is further evidence that the Company's
21 plan was successful and that customers were actually on notice of this proceeding.

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24 ¹⁵ As Glen Pond testified at the hearing on reconsideration, the Consumer Advisory
25 Group is composed of a diverse group individuals representing a broad spectrum of PacifiCorp
customer interests. Tr. 599-603.

26 ¹⁶ These customers are also residential customers.

1 **3. Customers Were Aware of the Company's Application and Participated in**
2 **the Proceeding by way of Intervention, Public Comment and Attendance at**
3 **the Public Meetings and Hearing.**

4 The degree to which the public took advantage of the opportunity to participate in the
5 Commission's decision-making process in this case provides additional support for PacifiCorp's
6 contention that its customers were on actual notice of the issues raised by the Application in this
7 proceeding. PacifiCorp's residential customers were represented throughout the case not only by
8 Commission Staff, but also by intervenor Timothy Shurtz, who himself made significant efforts
9 to ensure that PacifiCorp customers were on notice of the proceeding. Monsanto and the
10 Irrigators also intervened and actively participated in the case from the outset. In addition, in
11 response to the notice and press reports regarding the Stipulation, Nu-West petitioned to
12 intervene late and its petition was granted without opposition by the Company.

13 Customers also made their views known by way of written comment to the Commission
14 and by testifying at the public hearings. Included in PacifiCorp's Exhibit No. 28 are the
15 numerous written comments submitted to the Commission in this case by residential, industrial
16 and irrigation customers, as well as their legislative representatives. Those comments
17 demonstrate that customers were well aware of the pending request for recovery of excess power
18 costs and the other major issues presented by the Company's Application.

19 Further evidence of customer awareness is the level of attendance at the public hearings
20 in this case. At those hearings, 18 members of the public testified on the record.
21 (Exhibit No. 29.) As the Commission knows, more customers attended these hearings than
22 signed up to testify, including 10 state legislatures (one by letter submission) in Rigby and eight
23 state legislators (five current and three former) in Preston. The fact that these hearings were well
24 attended by customers and their legislative representatives further demonstrates that customers
25 were well aware of the Company's Application.

1 **4. All Issues Relating to the Company's Application and the Rate Change**
2 **Resulting from the Stipulation Were Raised and Thoroughly Developed for**
3 **Commission Consideration.**

4 Even if bill-stuffer notice had been provided, no information would have been presented
5 other than that which was before the Commission at the conclusion of the proceedings in this
6 case. The interests of each customer class were represented throughout the proceeding, both
7 formally by way of intervention and informally by way of public comment and protest. The
8 issues regarding the rate increase were thoroughly explained by Staff and the Company in the
9 workshops and well aired in the public meetings. In short, by the time the public meetings were
10 concluded, there was no indication of any issues that could have been productively addressed in
11 further proceedings.

11 **C. The Size of the Civil Penalty Imposed is Grossly in Excess of Any Penalty the**
12 **Commission Has Ever Before Imposed on a Utility—Despite the Strong Mitigating**
13 **Facts in This Case.**

14 As described in detail in the Company's Petition for Reconsideration, the \$1,087,720
15 penalty imposed in this proceeding is unprecedented. The largest civil penalty this Commission
16 has ever before imposed is \$75,000 against Washington Water Power for tariff and statutory
17 violations lasting **41 months** in duration.¹⁷ Other civil penalties approved by the Commission
18 include a \$13,000 penalty assessed against Union Pacific Railroad for its failure to comply with a
19 Commission order¹⁸ and a \$1,000 penalty agreed to by Consent Agreement against One Call
20 Communications, Inc. for its violation of a Commission rule.¹⁹

21 ¹⁷ See *In the Matter of the Investigation of the Washington Water Power Company and its*
22 *Compliance with WWP-Electric Line Extension Tariff Schedule No. 51.*, Case No. WWP-E-94-9,
23 Order No. 25816 (Nov. 29, 1994) (approving reduced civil penalty of \$75,000 for Water Power's
24 41-month violation of its Schedule 51 line extension tariffs).

25 ¹⁸ *Re Union Pacific Railroad Company*, Case No. UP-RR-90-3, Order No. 23773 (Jul. 9,
26 1991).

¹⁹ *Idaho Public Utilities v. One Call Communications, Inc.*, Consent Agreement (dated
 Jan. 1995).

1 Imposition on PacifiCorp of a penalty that exceeds by 1,350 percent the highest penalty
2 ever approved by this Commission is grossly excessive in light of the circumstances surrounding
3 the alleged violation—especially when compared to civil penalties imposed previously by the
4 Commission for violations that are more severe in nature and scope. The record in this case does
5 not include any evidence of aggravating circumstances; to the contrary, all the evidence is of
6 mitigating circumstances. If this penalty is allowed to stand, its disproportionate size will invite
7 the question, what is going on here that does not appear in the record or in Commission
8 precedent? There is no acceptable answer to this question. The Commission’s actions must be
9 based on substantial evidence in the record and consistent with the Commission’s own precedent.


10 This inexplicably harsh treatment is exactly the type of action the law regards as arbitrary
11 and capricious and does not permit public agencies to take. Rather, the integrity of government
12 agencies requires that their actions be bounded by the applicable law, the facts of the particular
13 case, the precedents they have set, and fair notice of their intention to alter that precedent.
14 Because the over \$1 million penalty assessed in this proceeding is unreasonable and arbitrary in
15 all these respects, it must be set aside. The Commission’s precedent would suggest that at this
16 stage of the case, when return of the application is no longer appropriate, a warning and order for
17 prospective compliance with Rule 102 is the only response that is consistent with the facts. If a
18 penalty is imposed, that penalty should be limited to \$2,000, the statutory maximum for a single
19 rule violation. At most, the Commission’s precedent would limit the penalty to the highest
20 penalty previously imposed for any violation within the Commission’s jurisdiction, \$75,000.

1 **CONCLUSION**

2 WHEREFORE PacifiCorp respectfully asks this Commission to reconsider its
3 findings in Order No. 29034 that PacifiCorp violated Rule 102 of the Commission's Utility
4 Customer Information Rules and its assessment of a \$20 per customer credit, or a total of
5 \$1,087,720, as a penalty for the alleged violation. In so doing, PacifiCorp requests that the
6 Commission rescind those findings related to Rule 102 and withdraw the civil penalty imposed
7 by the order.

8 DATED: September 26, 2002.

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10 Respectfully submitted,

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12 _____
13 James F. Fell
Erinn Kelley-Siel

14 Of Attorneys for PacifiCorp,
15 d/b/a Utah Power & Light Company
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